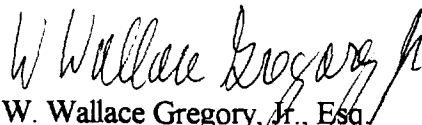


Rachelle B. Chong, Commissioner
March 10, 1997
Page 8

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Respectfully submitted,


W. Wallace Gregory, Jr., Esq.
Associate General Counsel
Duke Power Company

WWG,Jr.\cat

³ *In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*; Docket No. 92-9, RN-7981, RN-8804, *Second Memorandum Opinion and Order*, FCC 94-303, (adopted: November 28, 1994; released December 2, 1994).

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DUKE POWER

March 10, 1997

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Re: FCC Staff White Paper on Private Land Mobile Radio Services;
FCC Staff White Paper on Market Based Spectrum Policy;
RESPONSE AND COMMENT OF DUKE POWER COMPANY

Dear Mr. Hundt:

Duke Power Company ("Duke") hereby provides its comment on both the recently released staff White Papers on private land mobile radio services ("PLMRS")¹ and market-based spectrum policy.²

We realize, Chairman Hundt that you have been a steadfast proponent of spectrum auctioning. In numerous discussions with senior members of your staff, Duke representatives have openly and frankly exchanged views about the subject. Duke has no objection to the general concept of modifying the Commission's approach to licensing of commercial spectrum. Nevertheless, even the most staunch supporters of auctions have, as discussed below, agreed that exceptions must be made in certain instances--particularly for the protection of the public safety. Therefore, we ask that our views on licensing policy and the specific needs of Duke Power be taken into account in your analysis of how best to serve the public interest.

¹ *Private Land Mobile Radio Services: Background; Staff White Paper*, Federal Communications Commission-Wireless Telecommunications Bureau (December, 1996).

² *Using Market-Based Spectrum Policy To Promote the Public Interest*; co authors Gregory L. Rosston and Jeffrey S. Steinberg (January 1997).



Duke Power is particularly interested in the Commission's spectrum policies as they relate to private radio system licensees in the 800 MHz spectrum range. In compliance with the PLMRS requirements of various state and federal regulators, and with the active encouragement of earlier FCC licensing policies, Duke has constructed and now operates one of the nation's largest private internal 800 MHz radio systems. This system has operated successfully since the mid-1980's and it provides Duke with "lifeline" telecommunication facilities. While Duke's business interests undoubtedly are advanced by the telecommunications capabilities provided by this system, the system was driven by service and safety, not profit. The planning and construction of this system was a tremendously expensive and burdensome undertaking for Duke, and the prime impetus for construction of the system was Duke's belief that safety and/or emergency traffic needs justified a major capital investment in 800 MHz facilities to ensure that adequate and reliable telecommunications capabilities would be available at all times. Thus, Duke has a tremendous interest in the Commission's adoption of policies regarding spectrum--particularly when policies are adopted which affect licensing of PLMRS systems in the 800 MHz spectrum range. In light of Duke's special interest in the Commission's 800 MHz policies, Duke wishes to respond to both of the recently released White Papers, as both potentially impact Duke's telecommunication operations.

Wireless Bureau PLMRS White Paper

At the outset, Duke wishes to assure the Commission that it is in agreement with the predominant theme of the Wireless Telecommunications Bureau's background paper. The paper appears to be a fair and balanced attempt to inform the Commission about the development and

status of private land mobile systems and the problems which would be faced by PLMRS licensees should the Commission modify its PLMRS licensing methodologies.

Specifically, Duke agrees with the Commission's Wireless Telecommunications Bureau staff that:

- Some users of PLMRS spectrum have important safety and emergency responsibilities which are met through PLMRS systems;
- CMRS dispatch offerings will be quite limited and CMRS systems will be unable to provide wide area "custom-tailored" services to meet the needs and responsibilities of large system licensees with safety responsibilities like Duke;
- For some private licensees like Duke, high telecommunication system reliability levels are mandated; and the licensee operates the system, in part, because of requirements by state and/or federal agencies;
- Large scale safety-oriented systems like Duke's are comparatively few in number; however, should the Commission change the licensing paradigm, these systems will face serious consequences;
- It is doubtful whether CMRS systems ever will fully meet the needs of systems like Duke's in a meaningful way;
- The Duke system and other similar systems represent a specialized market with limited commercial appeal--thus CMRS licensees will have little incentive to cater to the special needs of such entities. This is particularly true with regard to system "emergency override" needs and reliability level requirements, as well as adequate signal coverage, particularly for thinly populated rural areas which have minimal commercial appeal;
- Licensees such as Duke have unique needs for full control of their systems to ensure message override capabilities and priority service restoration during emergencies which are not uncommon;
- They also have special needs for both capacity and reliability during emergency situations which CMRS operators may not be able to provide in the foreseeable future;

- Duke agrees that many licensees of smaller 800 MHz systems will be able to migrate to CMRS because of practicality and the availability of service and cost savings. However, systems like Duke's will be unable to do so;
- Thus, Duke's system and other large scale similar systems will, with certainty, "buck the trend" anticipated by the Commission in migration of PLMRS systems to CMRS operations.

While Duke agrees with the Staff on many points, we must once again remind you that our system does not "fit the mold" of the typical smaller SMR system, and it will be extremely difficult for us to meet our public interest responsibilities without maintaining our own adequate and reliable telecommunications facilities for the long term.

Market-Based Spectrum Policy White Paper

Of the two White Papers, we find the potential impact of the second White Paper to be considerably more alarming and to pose significantly greater harm to our telecommunication operations. While Duke agrees with the general premise that spectrum auctions can help recover the value of spectrum for the public, other considerations, which in some instances militate against auctions, are given too short shrift in the analysis. Duke does not disagree with the use of auctions for licensing purely commercial systems. In fact, Duke has invested in spectrum through the Commission's earlier broadband PCS auctions, and we admit that market forces are sometimes the best means by which to allocate commercial resources.

Nevertheless there are instances where the marketplace cannot properly allocate resources because of external factors. As the Paper's authors point out, where marketplace failures occur, other mechanisms to assign spectrum have been suggested. Duke's internal, safety-oriented 800

Reed E. Hundt, Chairman
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MHz telecommunications system is a classic case where market forces cannot be relied upon to serve the public interest. Duke simply cannot outbid commercial interests for spectrum to maintain its internal system any more than can public safety system licensees without obtaining regulatory approval for what would be an onerous rate increase on all our ratepayers--in effect a new harsh tax on the public we serve. Duke and similarly situated entities are not, as the authors seem to believe, trying to pressure the Commission to resist market forces in order to protect private interests. Rather, Duke is asking the Commission to make an exception from the use of pure market forces to dedicate spectrum in the public interest for public utility safety-oriented operations just as the Commission does for public safety licensees. The Commission must ensure that the present and future needs of safety-oriented licensees are met, even if the Commission ultimately decides to employ auctions as its primary licensing method for commercial services.

Duke strongly disagrees with the public benefit analysis method utilized by the Paper's authors. We adamantly disagree that subsidies to the public safety licensees to allow them to bid at auctions for spectrum to expand their systems is a policy improvement over having spectrum "set aside" for such purposes. Additionally, Duke disagrees that special treatment should be granted only to public safety licensees. The Commission must recognize that a limited number of internal private systems do have public safety-oriented responsibilities which cannot be dismissed.

Unfortunately, the authors do not take the safety needs served by these systems into account. In the licensing scheme they suggest, Duke would be forced to bid against commercial players at auction and pay premiums for spectrum access to accommodate the continuing needs of its system. In such a scenario, the only losers would be captive rate payers who ultimately will have to foot the

bill through higher utility rates, because Duke has no choice other than to operate high-grade telecommunications systems to safely perform its public duties. Thus, we are convinced that the Commission can--and must-- provide a narrowly tailored policy establishing adequate spectrum set-asides for public safety and safety-oriented systems to ensure their continued ability to perform critical telecommunications functions.

The Commission must not only provide for continued operations of such systems but must also provide adequate spectrum resources for system upgrades and/or expansion where necessary. For example, Duke currently has a need to modify its 800 MHz facility serving the Anderson, South Carolina region. This need is dictated purely through unforeseeable circumstances beyond Duke's control which have created the need for the provision of electrical power in several locations which, until recently, were largely unpopulated and had no need for electric power. Due to population growth and demographic shifts, Duke now must serve suburban residential developments as well as an industrial development zone located in the area. But for the Commission's issuance of a Special Temporary Authority, this large scale power provision activity would now be taking place without adequate telecommunication capabilities. Nonetheless, Duke has been unable, to date, to finalize the modification of its system license to provide the necessary long term signal coverage because of the Commission's freeze on all 800 MHz applications that propose to expand a current system's footprint. The reliability of our service to new customers in South Carolina has been impaired as a result.

In order to avoid future repetitions of such potentially dangerous situations, the Commission must continue to ensure adequate spectrum availability for systems like Duke's. Therefore, the

Reed E. Hundt, Chairman
March 10, 1997
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Commission should not require any safety-oriented incumbent licensee operations to move from their current frequency assignments except on a purely voluntary basis. Moreover, to ensure that unforeseeable future system needs can be met, the Commission must maintain at least a minimal spectrum reserve in the 800 MHz spectrum range where only safety-oriented licensees will be eligible to acquire additional spectrum as needed. One possibility would be for the Commission to remove all commercial licensees from the current Industrial/Land Transportation pool frequencies as well as the public safety frequencies and to open these frequencies as a future spectrum reserve for a tightly controlled limited number of eligible entities with safety responsibilities such as Duke. Additionally, where voluntary spectrum exchanges take place between safety-oriented licensees and new commercial entities, replacement spectrum should not be taken from any safety-oriented spectrum reserves. Further, should the Commission ultimately decide that it will demand migration of safety-oriented systems, it must still provide the necessary future spectrum reserve and for purposes of the migration must provide special treatment to licensees along the lines as that given to public safety entities in the 2 GHz relocation proceeding.³

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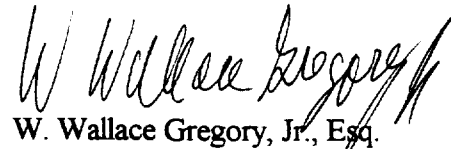
Reed E. Hundt, Chairman

March 10, 1997

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Respectfully submitted,

A handwritten signature in dark ink, appearing to read "W. Wallace Gregory, Jr.", with a stylized flourish at the end.

W. Wallace Gregory, Jr., Esq.

Associate General Counsel

Duke Power Company

WWG,Jr.\cat

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DUKE POWER

March 10, 1997

Michelle Farquhar, Chief
Wireless Telecommunications Bureau
2025 M Street, N.W.
Suite 5002
Washington, D.C. 20554

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At the outset, Duke wishes to congratulate you and your staff on the work done in preparation of the background White Paper on PLMRS. This paper, along with your recent statement at the "Next Generation Wireless" conference, displays an understanding on the part of the Bureau of the problems faced by private internal safety-oriented system licensees like Duke. Certainly Commission efforts to use "market forces" to allocate spectrum must be tempered where safety-oriented systems are effected by the rule changes. Duke applauds your statement that a "market forces" approach can not always meet society's needs where safety concerns are involved.

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Michelle Farquhar, Chief
March 10, 1997
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Michelle Farquhar, Chief
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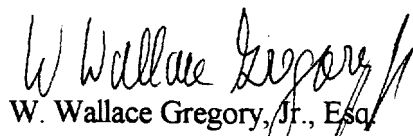
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